

REMARKS

Please amend the above-identified application, without prejudice, as stated in the foregoing Listing of Claims and Amendments to the Specification. Also, please amend the application by adding new figures, 6A and 6B, provided herewith.

The amendments to the specification and claims do not introduce any new matter into the application. The claims have been amended to include additional elements of a marking comprising intersecting stamped lines with a U-shaped cross-section of substantially uniform thickness. Support for the new figures, amendments to the specification, and claims is found on page 2, lines 21-36, page 3, lines 10-21, page 6, lines 22-30, and page 10, lines 28-37 of the originally filed application

Claims 1 – 18 are currently canceled and replaced with claims 19 – 34. Applicant appreciatively acknowledges the Examiner's withdrawal of the restriction requirement issued in the Office Action mailed on June 29, 2006. In the Office Action mailed on September 22, 2006, the Examiner rejected claims 6 and 15 – 18 under 35 U.S.C. §112, claims 1, 2, 6-9, and 13-18 under 35 U.S.C. §102(b), claims 1-16 and 8-13 under 35 U.S.C. §103(a) as being upatentable over U.S. Patent 6,079,188 to Katayama, et al. ("Katayama"), and claims 7, 14, 15, 17, and 18 under 35 U.S.C. §103(a) as being upatentable over Katayama in view of U.S. Patent 5,777,879 to Sommerfeldt ("Sommerfeldt"). Applicants respectfully traverse the Examiner's rejections and request reconsideration and withdrawal of the rejections based on the following remarks.

REJECTION OF CLAIMS 6 AND 15-18
UNDER 35 U.S.C. §112, SECOND PARAGRAPH

The Examiner rejected claims 6 and 15 – 18 under 35 U.S.C. §112, second paragraph; however, the Examiner failed to provide any reasons for rejecting claim 18. Applicant assumes that due to a typographical error, claim 18 was incorrectly included in the claims rejected by the Examiner under 35 U.S.C. §112, second paragraph. The Examiner identified a lack of antecedent basis in claim 6 for the term “the packaging blank” and in claim 17 for the term “the filling machine.” The Examiner also asserted that the language of claim 15, which claimed a process, was unclear. Applicant appreciates Examiner’s assistance in identifying the inadvertent typographical errors in former claims 6 and 17 and has provided the above Amendment canceling the prior claims and providing new claims in compliance with 35 U.S.C. §112. Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph.

REJECTION OF CLAIMS 1, 2, 6-9, AND 13-18 UNDER 35 U.S.C. §102(b)

The Examiner rejected claims 1, 2, 6-9, and 13-18 under 35 U.S.C. §102(b). Specifically, the Examiner rejected claims 1, 2, 6-9, 13, and 14 as being anticipated U.S. Patent 5,971,266 to Toth, et al. (“Toth). On page 3 of the current Office Action, the Examiner referred to Katayama instead of Toth in support of the rejection. Applicant assumes that the Examiner intended to refer to Toth and mistakenly referred to Katayama. The Examiner asserted that Toth discloses a packaging or blank formed from flat packaging material (30) having: fold lines (48, 50, 58, 60, and 134) and a symmetrical marking (156) having a mathematical correlation with the packaging material (30), the marking is recessed into the surface of the packaging material (30) (Col. 5, lines 28 – 32). Regarding claims 15-18, the Examiner rejected the claims as being anticipated by US Patent 5,971,266 to

Sampaolo, et al. ("Sampaolo") and asserted that Sampaolo discloses a process for packaging a material, the process including the steps of: moving a web (139) of packaging material; applying fold lines (63, 73) and U-shaped (figure 15) perpendicular markings (50, 51) together (143); providing optical reading devices (165) to read the material web (139); shaping, filing and closing the material web (figure 16). Applicants respectfully disagree.

Toth does not anticipate Applicant's invention because Toth fails to disclose every element of Applicant's packaging. Toth discloses a carton and blank that utilizes compressed areas that are strategically placed to facilitate 180° folds. These compressed areas are not markings. The compressed areas are not placed within the area of a carton wall, like Applicant's invention, but rather over a fold line. As demonstrated in Figures 9 – 12 in Toth, the compressed areas, which are located on the inside of the carton blank material, are hidden upon construction of the carton by panels 72 and 112. Therefore, the final constructed packaging taught by Toth lacks a marking on the outside of the carton that can eventually be scanned by a reading device. The shape of the compressed areas is also oval and not comprised of at least two straight lines with intersecting paths. Thus, Toth fails to disclose the elements of a mark with at least two straight lines with intersecting paths. Therefore, the reference fails to anticipate Applicant's packaging and blank.

Sampaolo also does not anticipate Applicant's invention because the process taught by Sampaolo lacks the element of applying a marking to the packaging material. In column 10, lines 27-30, Sampaolo discloses that a registration bar is preprinted on the material web to be later scanned for information about the carton. Applicant's marking is not printed but rather stamped into packaging material. In paragraph [0003] of the application, Applicant identifies the problem of distorted pre-printed bar codes during fabrication of the packaging and seeks to overcome this problem with a stamped marking. The Examiner asserts that the lines labeled 50 and 51 by Sampaolo are markings; however, Sampaolo discloses that lines

50 and 51 are score lines (column 10, lines 10-36), which are used to facilitate folding during the manufacturing of the carton. Thus, Sampaolo lacks the element of a stamped marking and does not anticipate Applicant's invention.

**REJECTION OF CLAIMS 1-6 AND 8-13 UNDER 35 U.S.C. §103(a),
AS BEING UNPATENTABLE OVER KATAYAMA**

The Examiner rejected claims 1-6 and 8-13 under 35 U.S.C. §103(a) as being unpatentable over Katayama. The Examiner asserts that Katayama discloses a packaging or blank formed from a flat packaging material (W) having: fold lines (column 2, lines 38 – 43) and a marking having a mathematical correlation with the packaging material (W; column 4, lines 48-52) and admits that Katayama does not disclose the desired design pattern claimed by the Applicant. The Examiner concludes that it would have been obvious to a person having ordinary skill in the art at the time the invention was made stamp any design pattern and refers to column 6, lines 47 – 49 in support of this conclusion. Applicants respectfully disagree.

Katayama lacks the element of a marking having a mathematical correlation with the packaging material. Katayama uses a location on the material as a mark, such as a printed pattern or a straw port (column 6, lines 46-49). Katayama, identifies a problem during fabrication of a carton which is the web of material may stretch or distort. When a final carton is produced, the pattern or position of a straw port on the carton may not be aligned properly. Katayama discloses two methods of controlling the appearance of the final product through monitoring the distance between marks on the material web: controlling the tension applied to the web or manipulating the amount of material folded on the ends of the carton (column 7, lines 44 – 49). The marks disclosed by Katayama do not include stamped lines with intersecting paths in a geometric pattern that correlates to the

dimensions of the final package. The marks taught by Katayama are merely reference points to maintain an acceptable printed pattern on the final product, but the marks are not capable of conveying information to construct a package with a high degree of precision as explained by Applicant in paragraph [0026] of the present application.

It would not be obvious to a person having ordinary skill in the art at the time the invention was made to include Applicant's stamped marking on a web of packaging material from Katayama's disclosure. Examiner is incorrect by asserting that Katayama states that any design pattern can be applied to the packaging material. In column 6, lines 47-49, Katayama states that specified patterns or marks are detected. There is no teaching, motivation, or suggestion offered by Katayama to apply stamped lines on the web material as a marking. The only information that is obtained from the mark disclosed by Katayama is the periodic distance between the marks. By using a geometric figure in the shape of stamped lines, Applicant's invention allows a method of scanning a mark to obtain and monitor the proper dimensions of the carton. With this information, the volume, position of sealing seams, or connecting seam can be monitored and adjusted during the manufacturing process (paragraph [0026] of the present application). The marking also does not distort due to stretching during manufacturing, unlike a printed pattern as suggested by Katayama. Therefore, Applicant's invention is patentable over Katayama and reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

**REJECTION OF CLAIMS 7, 14, 15, 17, AND 18 UNDER 35 U.S.C. §103(a),
AS BEING UNPATENTABLE OVER KATAYAMA IN VIEW OF SOMMERFELDT**

The Examiner rejected claims 7, 14, 15, 17, and 18 under 35 U.S.C. §103(a), as being unpatentable over Katayama in view of Sommerfeldt. The Examiner asserts that Katayama discloses a packaging or blank having a desired design stamped on the material

web and a process for packaging a material, the process including the steps of : moving the web of packaging material; applying fold lines (column 2, lines 38-43) and a marking (a; figure 4); providing optical reading devices (19); shaping, filling, and closing the material web with a desired design stamped on the web. The Examiner admits that Katayama does not disclose whether the design is flush, raised, or recessed. The Examiner further asserts that Sommerfeldt states that projecting or recessing marking is well known in the art for the purpose of detection (Column 4, lines 32-39) and concludes that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have an embossed marking on the packaging or blank material. Applicants respectfully disagree.

Neither reference discloses the element of a geometric marking with stamped lines that will not be distorted during the assembling process. Katayama fails to describe a raised or recessed design, and as previously discussed, Katayama does not disclose markings as taught by the Applicant. Katayama discloses the use of printed patterns or a straw port as a mark or reference point. Sommerfeldt discloses the detection of a mark for determining the processing lengths for elongate material (Column 2, lines 24 – 47). Sommerfeldt does not disclose a mark that is capable of conveying information that correlates to the dimensions of a packaging. Sommerfeldt merely suggests a raised or recessed mark suitable for monitoring the length of material during production.

A person having ordinary skill in the art at the time the invention was made would not combine the process taught by Sommerfeldt which simply involves cutting elongate material with the complicated process of carton production in Katayama, which requires, cutting, folding, and sealing. Neither reference discloses the element of a geometric marking with stamped lines that will not be distorted during the assembling process. In addition, neither Katayama nor Sommerfeldt provide a teaching, suggestion, or motivation

to apply a marking with stamped lines on a material web. Both Katayama and Sommerfeldt suggest applying a simple mark or reference point to monitor the length of material and not the overall shape of an assembled packaging. Therefore, Applicant's invention is patentable over Katayama in view of Sommerfeldt and reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

CONCLUSION

For the foregoing reasons, Applicant submits that the claims presented herewith are patentable over the prior art of record and respectfully solicits prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.